

REMARKS

Claims 1, 6, 17 and 19-21 remain pending in the application. Reconsideration and withdrawal of the final rejection are respectfully requested.

Applicants gratefully acknowledge the allowance of claims 17 and 19-21.

Additionally, Applicants propose amending claim 1 to incorporate the features of dependent claim 5, which was previously found allowable.¹

Applicants' Substitute Specification

In the Final Office Action, the previously submitted substitute specification was refused entry. Accordingly, Applicants submit herewith a further substitute specification, along with a properly marked-up copy, to obviate the previous specifications objections with respect to using brackets to identify subheadings in the specification. Additionally, Applicants have clarified that the "swing-circle-mounting surface" is more properly a "swing-wheel-mounting surface". At the same time, Applicants have withdrawn the "mortis and tenon joint" language previously submitted.

¹ The Examiner specified the allowability of claim 5 in the Office Action dated June 11, 2008. While that previous indication of allowability was not reiterated in the Final Office Action, no prior art rejection was made with respect to claim 5.

Rejection Under 35 U.S.C. § 112, First Paragraph

Applicants have amended independent claims 1 and 6 to reference the lug and hole joints as opposed to the mortis and tenon joints. As the Examiner acknowledges that the lug and hole joints are described in the original disclosure, it is respectfully submitted that claims 1 and 6 are in compliance with 35 U.S.C. § 112.

Prior Art Rejection of Independent Claim 6

In the Office Action, independent claim 6 and its dependent claim 10 were rejected as being anticipated by JP 292428. Additionally, dependent claim 10 was further rejected as being obvious over Godwin et al. (US 6,860,706) in view of Savoy (US 6,691,392).

In view of the amendment of independent claim 6 to incorporate the limitations of its dependent claim 10 and the following remarks, Applicants respectfully traverse these rejections and request reconsideration thereof.

Applicants' amended claim 6 recites a swing frame structure for construction machinery. The swing frame structure is arrangeable in a swing upperstructure and includes a center frame composed of side plates and a bottom plate joined to each other. The swing frame structure is provided with mating portions for bringing the side plates and the bottom plate into engagement with each other such that the side plates and the bottom plate are positioned relative

to each other. The mating portions comprise lug and hole joints. The lug and hole joints are positioned on a side outside of a swing-wheel-mounting surface. The lug and hole joints include holes formed through the bottom plate and lugs formed on the side walls such that the lugs can be inserted into the holes, respectively. The side plates are arranged in a pair. The lugs are formed on the side plates and the holes in which the lugs are to be inserted are formed through the bottom plate.

As can be seen in an exemplary embodiment shown in Figures 2 and 4, the claimed swing frame structure positions the lug (7c, 7d) and hole (5a, 5b) joints outside of the swing-wheel-mounting surface (5c) (see Figures 2 and 4; ¶ [0057] – [0059]). Owing to the advantageous positioning of the lug and hole joints on the outer side of the swing-wheel-mounting surface, Applicants' invention advantageously prevents rain water or the like from penetrating through such lug and hole joints into a grease bath that is arranged inside the swing wheel. This provides a stable construction of a hydraulic excavator (see ¶ [0081]).

In contrast, JP '428 nowhere discloses using lug and hole joints between the side plates and the bottom plate on the outer side of the swing-wheel-mounting surface. Accordingly, JP '428 fails to anticipate claim 1. Moreover, it cannot obtain the advantages of preventing rain water from penetrating into the grease bath inside of the swing circle through the joints.

Regarding the rejection of dependent claim 10 (now incorporated into independent claim 6) based on Godwin in view of Savoy, hereto such a combination, even if proper, would not lead to Applicants' claimed lug and hole joints positioned on a side outside of the swing-wheel-mounting surface. Godwin merely discloses a floor plate 70 to which are welded side walls 26, 32. No use of lug and hole joints are disclosed, let alone any specific positioning of the lug and hole joints between the side walls and a bottom plate so as to be outside of the swing-wheel-mounting surface in order to achieve the advantages of Applicants' invention.

Nor are the deficiencies in Godwin remedied by Savoy, which the Examiner cites for disclosing a loose assembly method utilizing tabs and slots. Thus, even if one were to construct a swing frame structure based on the combined teachings of Godwin and Savoy, they would not arrive at Applicants' claimed swing frame structure wherein the lug and hole joints are arranged outside of the swing-wheel-mounting surface, which has the advantages described in Applicants' specification (see ¶ [0081]).

In view of the foregoing, Applicants respectfully submit all pending claims, i.e., claims 1, 6, 17 and 19-21 are now in condition for allowance. An early notice to that effect is solicited.

No New Issues are Raised by These Proposed Amendments


Because Applicants have merely incorporated the allowable feature of claim 5 into independent claim 1, as well as the language of original dependent claim 10 into independent claim 6, no new issues have been raised and it is thus respectfully requested that the proposed amendments be entered and the application be allowed.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 080306.57204US).

Respectfully submitted,

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